for the REVIEW to notice that, as in other cases on the subject, the reasoning of Messrs. Warren and Brandeis' article (4 Har. Law Rev. 193) is adopted by the court.

ANNUAL REPORT OF THE ATTORNEY-GENERAL OF MASSACHUSETTS. — The Attorney-General of Massachusetts in his Annual Report for 1893 comments interestingly upon the increasing proportion of statutes held unconstitutional, pointing out that more have been declared void in the last four years than in the first seventy of the Commonwealth's existence. He also makes several suggestions for the relief of the courts, the most important of which seems to be his proposal that questions of law in trials for misdemeanors should be taken to the Supreme Court only upon report by a judge, and not as now, upon the exceptions of the party, which are often, if not always, either frivolous, or intended solely for delay. He suggests also, that the sessions of the full bench of the Supreme Court be consolidated, and no longer held, as now, in every county in the State. The Massachusetts Supreme Court is, among those of the more important States, almost the last which leads such a perambulatory existence.

Until 1872, all capital trials in Massachusetts were held at the bar of the Supreme Court, then, until 1891, before at least two judges of that court. The result of this has been, according to the Attorney-General, that during the period up to 1891, no capital conviction was reversed. In the year covered by this report, however, two cases of great interest to the profession have shown that no such fortunate results are to be expected from the present system. In one the exclusion of a bit of evidence which subsequently proved immaterial, furnished ground for a new trial, which resulted in an acquittal, based upon substantially the same evidence upon which the previous jury had given a verdict of guilty. In the second, the well-known Borden case, the acquittal has been the subject of adverse comment in the profession (27 Am. L. Rev. 819) because of the exclusion of testimony, which does not appear clearly inadmissible; an exclusion, the propriety of which cannot, under the present law, be tested above, and which has not that final nature which a decision would have if made by members of the Supreme Court.

PARTNERSHIP — DISTINCT PERSONALITY. — To the argument of counsel in *In re Beauchamp Bros.* [1894], Q. B. 1, that a partnership is an entity having an existence separate from that of the individual members, Lord Justice Kay makes pithy reply: "It is no such thing, and the rules do not mean anything of the kind." The learned Lord Justice is true to the traditions of the English common law. The doctrine so emphatically reasserted is a favorite one. It may be worth while to place alongside this forcible utterance the language of one certainly no less worthy of respect than the distinguished Lord Justice. Said Sir George Jessell, in *Pooley* v. *Driver*, 5 Ch. Div. 458, "Everybody knows that partnership is a sort of agency, but a very peculiar one. You cannot grasp the notion of agency properly speaking unless you grasp the notion of the firm as a separate entity from the existence of the partners; a notion which was well grasped by the old Roman lawyers, and which was partly understood in the courts of equity before it was part of the whole law of the land as

it is now." But it must be sorrowfully admitted that this is almost a solitary statement in the English reports. It is impossible, say the courts, for a partnership to be anything but a joint enterprise, notwithstanding the actual course of business to the contrary. The effrontery of the commercial world in suggesting its own conception of a partnership never fails to draw forth their indignation. It speaks well for the hardihood of merchants that they have continued to carry on business with this understanding in defiance of the judicial edict that a partnership shall not be allowed to be an entity. Yet, in spite of this declamation on the part of the judges, there are some doctrines which, if one may venture to insinuate such a thing, can be explained on no other theory than the one here repudiated. Indeed, this very case assumes that an infant cannot withdraw from the firm creditors what capital he has embarked in a partnership. Why he, like an ordinary joint debtor, cannot defend on the ground of infancy, is a puzzle which the court deciding this case does not solve. We have here the spectacle so often presented of a decision based on the assumption that a partnership is an entity, coupled with the uncompromising *dictum* in the memorable and tremendous words of Betsey Prig, "I don't believe there 's no sich a person."

A CASE UNDER THE RULE AGAINST PERPETUITIES. — The Rule against Perpetuities may be said to be founded on two grounds of legal policy; the one, the general objection to restraints on alienation; the other, the necessity that the estate should vest within the prescribed periods. The second grew out of the first, but that it is recognized as perfectly distinct from it appears from the case of *In re Hargreaves*, 43 Ch. Div. 401, where the estate was alienable within the period, but yet held bad for remoteness.

Now this rule, being an arbitrary creation of the law, should be completely within the control of the maxim *Cessante ratione, cessat ipsa lex;* and therefore the recent decision of the English Court of Chancery in *Goodier* v. *Edmunds*, 3 Ch. Div. (1893) 455 (Stirling, J.), seems questionable, although mentioned with approval by Chitty, J., in the same court. *In re Daveron*, 3 Ch. Div. (1893) 421. There was a gift in trust for sale, which was not limited to take place within the proper period. The members of the class for whose benefit it was given were, however, ascertainable within that period, and the fixed amount of their shares was also ascertainable. They could, therefore, call for an immediate conveyance, so that the estate was neither inalienable nor too remote, being destructible within the prescribed period. The court seems to base its objection on the theory that the use would shift from the beneficiaries of the trust to a purchaser at a period too remote, but the objection is scarcely satisfactory. It was never made an objection to a conditional limitation after an estate tail that the use shifted, and yet such is actually the case. The reason given is that the tenant in tail, by suffering a recovery, might at any time defeat the limitation, and therefore there is no greater tendency to a perpetuity than in an ordinary remainder expectant upon the regular determination of the estate tail. This reason, which is admittedly valid, would seem to find equal application in the case of the power or trust for sale.

This view seems to be supported by *Crocker* v. *Old South Society*, 106 Mass, 489, and *Seamans* v. *Gibbs*, 132 Mass. 239.